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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES
Forty-second session
Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES; REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Letter dated 14 May 1990 from the Chargé d'affaires of the Permanent Mission of the Socialist People's Republic of Albania to the United Nations Office at Geneva addressed to the Under-Secretary-General for Human Rights

I have the honour to transmit herewith part of a report submitted on behalf of the Council of Ministers by Comrade Manush Myftiu, Vice-Chairman of the Council of Ministers, to the seventh session of the eleventh legislature of the People's Assembly of the SPR of Albania on the improvement and democratization of penal legislation and some organizational measures.

I would appreciate it if you could arrange for this report to be circulated as an official document of the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-second session and of the Commission on Human Rights at its forty-seventh session.

(Signed) Alfred Papuçiu
Chargé d'affaires

THE IMPROVEMENT AND DEMOCRATIZATION OF PENAL LEGISLATION AND SOME ORGANIZATIONAL MEASURES

1. Drawing upon on the experience gained over a number of years in the struggle to defend the socialist social order and the rights and freedoms of citizens, the Council of Ministers has prepared the draft law "On some amendments to the Penal Code" dealing with a number of problems.

The establishment of the institution of rehabilitation or of the quashing of convictions

Our society is concerned that persons who, in the past have been convicted for the commission of a criminal offence, should be re-educated to enable them to become socially useful. The institution of rehabilitation is consistent with our lofty human principles, namely, that people are capable of mending their ways. In the final analysis, the criminal conviction is aimed at educating the offender. It is also the aim of the educational work undertaken by society vis-à-vis convicted persons.

2. Our country's experience shows that the educational role of society has been very effective and that the majority of persons who served their sentence gave proof of good conduct. They work and behave well in society. Social rehabilitation is thus put into practice. However, the Penal Code does not envisage legal rehabilitation for those who have committed offences.

3. In order to bring social rehabilitation into line with legal rehabilitation, provision has been made to introduce in the Penal Code the institution of legal rehabilitation and judicial rehabilitation. Legal rehabilitation means that the law itself annuls the punishment automatically when a convicted person has served a suspended sentence or a sentence involving confinement for up to five years, depending on the respective length of the period of detention, and has not committed a further offence. Judicial rehabilitation consists of the courts annulling the conviction, at the request of the State organ and the social organization.

4. This provision is applied in the case of persons sentenced to deprivation of liberty for a period exceeding five years and extending over the period of time that elapses after the sentence has been served if, in the course of this period, these persons have not committed a further offence and show by their behaviour their respect for the rules of society. The introduction of the institution of rehabilitation in the Penal Code, dictated by the democratic and human content of our socialist order, is an important measure aiming at the improvement and further democratization of our legislation which prescribes that persons who are rehabilitated will, from the legal and practical viewpoint, fully enjoy all the rights guaranteed by the Constitution and laws in force in the same way as all other citizens.

5. The draft law also envisages the introduction of the institution of prescription of legal proceedings and of the execution of sentences; this means the suppression or halting of proceedings for a criminal offence or the execution of the sentence when the legally prescribed times have elapsed, not only for petty offences, as is the case at present, but also for crimes.

6. The introduction of prescription means that it is accepted that a person who has committed a criminal offence is no longer a threat to society and it is unthinkable that he should be prosecuted and sentenced. It is a logical and humane solution.

7. The prescription is planned for periods ranging from 5 to 20 years depending on the level of social danger of the criminal offence. These periods may be doubled if the perpetrator of the criminal offence avoids prosecution, but in no case may they exceed 25 years. For crimes against the State, which incur the death penalty, there will be no prescription either as regards criminal prosecution or execution of the sentence.

8. Another aspect of the further improvement of our Penal Code is the introduction of the institution of release on parole.

9. To qualify for release on parole, the convicted person must give proof of good conduct, reflected in his work while serving his sentence. To be eligible for release on parole, he must have served not less than half of his sentence.

10. The Penal Code's provision of release on parole has become possible because the institutions in which convicted persons serve their sentences organize educational work to enable them to become useful members of society once again. This institution offers new scope for the further democratization of penal policy and the implementation of the line of the masses, because even social organizations, as well as the State organs, are entitled to propose this measure on behalf of a convicted person.

Reduction in the number of cases involving the death penalty

11. At present, the Penal Code envisages the death penalty in 34 situations. It has been applied exclusively for crimes posing a major threat to society.

12. The penalty has not been applied for many years for a large number of crimes expressly punishable by the death penalty. There are also 11 articles that prescribe the death penalty for crimes committed in wartime or under a state of emergency; they form an artificial adjunct to the Penal Code which, moreover, is applied in the normal situations of national life.

13. For this reason, the death penalty, as an extraordinary measure, will be limited and prescribed only for very serious crimes, such as betrayal of the homeland, espionage, acts of terrorism, sabotage, embezzlement of socialist property in specific circumstances, the plundering (extortion) of socialist and individual property and homicide. The death penalty is therefore abolished in 23 situations and remains in force in only 11 situations.

14. The proposal to rule out the death penalty not only for pregnant women, as is the current practice, but for any women, in any case and without any exception is very important; it is a further aspect of the socialist humanism that characterizes our order.

15. The draft law gives particular importance to refining the provisions on crimes against the State.

16. These crimes pose a serious threat to society. They include the criminal offences of defection and agitation and propaganda against the State. Since experience has so far shown that most of those who have tried to defect were immature persons, not often prompted by political and counter-revolutionary motives, provision has been made for defection, which continues to be a reprehensible act, to be no longer treated as betrayal of the homeland but rather as unlawful crossing of the frontier.

17. We hereby inform the People's Assembly that the Council of Ministers has prepared a draft law in the form of an amendment to the existing decree on issuance of passports stipulating that any Albanian citizen who applies for a passport for abroad will be entitled to receive one.

18. The Penal Code no longer describes as betrayal of the homeland the establishment of foreign or joint economic companies and institutions with monopolies and other States or the act of receiving credits from them, since it is not necessary for each prohibition prescribed by the Constitution to be sanctioned in the Penal Code. Also in the future, we shall not accept credits and sign various economic agreements containing political conditions that infringe our national sovereignty. If an employee of a State organ commits acts incompatible with the aforementioned provisions, he will be accountable on the grounds of misuse of authority. The abrogation from the Penal Code of this form of betrayal is therefore entirely justified.

19. The crime of agitation and propaganda is one of the crimes against the State for which amendments are proposed in the Penal Code. At the present time the Penal Code makes provision for punishment of fascist, anti-democratic, religious, bellicose and anti-socialist agitation and propaganda. The formulation of the crime of agitation and propaganda is very broad and offers scope for various subjective interpretations which in practice might have undesirable consequences because they might mean that persons might be described and condemned as enemies who are no such thing. Our Party and Government have always been at pains to ensure that citizens are defended against arbitrary interpretations and acts by any organ. Therefore, agitation and propaganda against the State are reformulated more clearly in the draft law.

20. The instrument considers as a crime only those acts of oral, written and other forms of agitation and propaganda aimed at overthrowing the social and State order established by the Constitution of the People's Socialist Republic of Albania, whereas fascist and bellicose agitation and propaganda continue to be a crime against the State and are dealt with in a special article.

21. With this new formulation, the new provision in the Penal Code concerning agitation and propaganda removes the danger of subjectivism and interpretations that might lead to the violation of the law and the democratic rights and freedoms of citizens enshrined in the Constitution, while at the same time it guarantees the protection of the State's interests.

22. By narrowing the definition of agitation and propaganda against the State, as we said earlier, the punishment prescribed for religious propaganda inter alia, is abolished. That is in conformity with practice, because thus far there has been no instance of criminal proceedings for such acts. In our

country the State is separate from religion and faith is a question of conscience for each individual. The abrogation from the Penal Code of the sanction for religious propaganda does not mean that we shall abandon atheist propaganda and educational work with the people. We hold the firm belief that these efforts will help to consolidate patriotism and national consciousness and that the interest of our nation and our homeland transcends any religious distinction. With their unique historical maxim "the Albanian's faith is the fact of being Albanian", our Renaissance forebears have bequeathed to us a heritage of enduring and very great value for our own time. Our Party and State will strive in the future to uphold our revolutionary patriotic traditions so that the question of the defence of freedom, independence, sovereignty and unity of the people will always transcend that of religion.

23. Deportation and expulsion as administrative measures were instituted in our country in specific historical circumstances and served to consolidate and protect our social order. However, in the present circumstances, with the development of our social and State order and the changes carried out in order to strengthen the rule of law and safeguard the interests of the citizens of our country, there is no justification for maintaining and applying the current decree on deportation and expulsion as administrative measures. A further reason for repealing this decree is that, in contrast to our entire legislation, coercive measures by the State are not linked by the commission of a criminal offence to individual responsibility and personal guilt. Besides, this decree is also at odds with the ongoing amendments to our legislation and the extension of the legal defence in the investigatory stage and during court proceedings.

24. The repeal of this decree will not create a vacuum because deportation and expulsion are now regarded as criminal sanctions that will be handed down by the court for a specific offence. Apart from that, the draft law "on preventive measures against individuals who pose a threat to the security of society", has been submitted to the People's Assembly for consideration and approval; the draft bill does away with some of the measures formerly included in the law on deportation and expulsion as administrative measures.

25. Preventive measures are taken against individuals conducting activities which, although not constituting a criminal offence, are incompatible with good conduct and social morality, against people who tend to commit criminal acts, who live entirely or partly on unlawful income, who encourage prostitution, the corruption of children or gambling, who refuse to perform socially useful work or who are members of criminal groups and associations.

26. These measures may be taken against persons over the age of 18.

27. Preventive measures will be awarded only by a court, in regular and prompt proceedings, guaranteeing the accused person the right to a defence counsel and the right to lodge a complaint.

28. The ninth and tenth plenums of the Party's Central Committee also adopted decisions on the upgrading of judicial bodies and guarantees of the legal defence of citizens.

29. In order to strengthen socialist legality, as well as the assistance to and supervision of the courts of zones and districts, to bring about an improvement in the quality of legal activity and to carry out more skilled and systematic work on the continuing improvement of legislation, a draft law has been prepared on the establishment of the Ministry of Justice. It will enable the Council of Ministers to cope better with the problems of justice and a series of other issues related to legal relations in our country.

30. The draft law on the establishment of the Ministry of Justice has been drafted in a way that is entirely consistent with the provisions of the Constitution, confirming the independence of courts in hearing cases. The Ministry will monitor the organization and functioning of the courts and will guide and control the administration of justice, without intervening in judicial proceedings. It is expected that the Minister of Justice, in order to consolidate socialist legality and in the interest of citizens, will have the right of petition, with a view to defending the law, against decisions by district and zone courts which are already irrevocable; this right does not infringe the principle of the independence of the courts.

31. Apart from the aforementioned responsibilities, the Ministry of Justice will also monitor the organization and functioning of the bar association, offices of bailifs and notaries. It will prepare draft codes, draft laws, etc. related to the organization and activities of courts, while at the same time giving its views on all draft legal instruments prepared by the Ministries and other central institutions before they are forwarded for consideration by the Council of Ministers.

32. The Ministry of Justice will also be responsible for co-ordinating work on the training of lawyers for various sectors, co-ordinating activities on publicizing laws, running the criminology and forensic medicine service, etc.

33. Thus far, the defence of the legal interests of citizens, the State and social organizations was assured, in accordance with the provisions in force, by the legal aid offices which in those cases prescribed by law, took on the defence of accused persons brought before the courts. However, the restoration of the bar association is an important measure which broadens the defence of the rights of citizens and helps to strengthen the rule of law. The bar association will render legal assistance to citizens, State organs and social organizations and will plead on behalf of their legitimate interests in court, in investigation proceedings and in arbitration and at the same time will influence the course of justice. The measures envisaged in the draft law will lead to the complete and effective implementation of article 102 of the Constitution which stipulates that a defendant shall enjoy the right to a defence, because now the citizen will be guaranteed professional defence in civil as well as criminal cases whenever he so requests. Moreover, this defence, is more comprehensive and for the first time encompasses the investigation procedure; this marks a new phase in the democratization of criminal procedure in our country.

34. Besides defending the legitimate rights and interests of the defendant and of parties to the investigation and legal procedure, the bar association will also offer all kinds of legal aid, participating in formulating indictments, applications for criminal proceedings, complaints against administrative bodies, etc.

35. The bar associations are expected to be organized as boards or associations of persons assembled on a voluntary basis. The intention is to establish for lawyers conditions such as will enable them to discharge their task properly, to be independent in their activities and to be objective.

36. In the context of simplifying the organs of justice, it is planned to abolish from the legal system the village, town and suburban courts which up to the present time have tried criminal cases and delivered verdicts, provided they were authorized to do so.

37. Their abolition is justified by the virtual ineffectiveness of their decisions in criminal, civil and administrative cases. According to the draft law which has been submitted, they will become organs of a social character, in the form of social courts, which will function at the level of the people's councils and will be elected by the people every three years in an open election. Their members will be social activists who have won the confidence of their fellow citizens. These courts will work closely with the social organizations and will make an important contribution to strengthening the unity of the people, by recourse to procedures for reconciling individuals who have lodged complaints about insults or physical attacks and those who have committed them, without handing down a sentence on conviction. It is planned that administrative offences shall be dealt with by special organs (the police, the body of inspectors, etc.).

38. The aforementioned amendments envisaged in the draft laws on the establishment of the Ministry of Justice, the bar association and the social courts make it necessary to amend and supplement, in due form, the codes of criminal and civil procedure, which are also subject to the approval of this assembly.